

June 17, 2004

The regular meeting of the Board of Adjustment of the Township of Chatham, County of Morris, and State of New Jersey commenced at 7:30 p.m., 58 Meyersville Road, Chatham Township. The meeting was called to order by Chairperson, Lawrence Dalziel.

Attendance was taken and the following members were present:

Lawrence Dalziel, Chairperson
James Matthews, Vice-Chairperson
Joseph Cooney
Parker Godwin
Therese Hough
Peter Pizzi
Jesse Benton
Timothy Walters

There were no members absent.

Also in attendance:

Lewis Wilson, Esq., Board Attorney
Mary Jo Tucker, Recording Secretary
Jason Survella, Attorney for Calendar 04-120-3

The agenda for the evening was as follows: Calendar 04-39-57, Brian and Suzanne Boutilier, (mem.); Calendar 04-120-3, Thomas Nebus

The open public meetings statement was read by the Chairperson.

Mr. Dalziel said that there were a number of work meeting minutes that needed to be approved, and that some were missing. Mr. Godwin said that he would e-mail copies of missing work meeting minutes (March and April). The regular minutes of April 22nd were approved by the Board.

Calendar 04-39-57, Brian and Suzanne Boutilier

Mr. Wilson read the resolution in title only. Changes were made and noted. Mr. Godwin moved that the resolution be accepted. Mrs. Hough seconded the motion. A vote was taken. All were in favor, and the resolution was approved.

Calendar 04-120-3, Thomas Nebus

Mr. Thomas Nebus was sworn in by the chairperson. The black book of exhibits was not available at the meeting so it was decided that exhibits would be marked into the record at the July meeting. Mr. Wilson said that Mr. Survella needed to change the affidavit of service. Mr. Survella said that Rusty Schoemer was their engineer and that he had a prior engagement that would not allow attendance at tonight's meeting. He said that Mr. Schoemer would attend the July meeting if his testimony would be required.

Mr. Survella said that they were in front of the Board to ask for a variance to re-construct a retaining wall. He said that the retaining wall would be 7/10ths of a foot from the property line. He said that Township Ordinance 99046 dictated that the height would be six feet permitted, and that the proposed retaining wall was a 6 foot, 9 inch retaining wall. He said that as far as the setback from the house, 20 feet was required by the ordinance and 9 feet was what they were proposing. He said that they were proposing it based on a C variance. He said that the variance was due to the exceptional topographical conditions of the property and the exceptional situation uniquely affecting the Nebus property. He said that they believed the variance should be granted, and it would be without substantial detriment to the public good, and it would not substantially impair the intent or purpose of the zoning ordinance.

Photos were submitted by Mr. Survella depicting existing retaining wall. Mr. Dalziel asked if the retaining wall was being built in the exact location of the current retaining wall. Mr. Nebus answered that it was. Mr. Nebus continued to say that the wall consisted of railroad ties when they purchased the property, and it was rotted, rippled and leaning and about to fall down. He said that the grade and height of the proposed wall would remain the same. Mr. Nebus said that each rainfall brought more sand between the timbers and that the current wall was rotting away. Mr. Survella asked Mr. Nebus to explain the layout of his property where the wall was located. Mr. Nebus said that behind their house there was a swimming pool with a patio with pavers all around the pool just

put in four years ago. He said that the pavers would have to be reset because they sank, some 6 inches in the last four years, and that they also needed to be replaced. Mr. Survella asked how far the wall was from the pool. Mr. Nebus said approximately 18 feet. Mr. Survella asked if the wall deteriorated, would the pool be affected. Mr. Nebus answered that it was possible that the pool would be affected. Mr. Nebus said that at the highest point the wall was approximately 6 and ½ feet above the driveway and towards the back of the property, the wall stayed level, but the property came up. Mr. Survella asked what the affect would be if the wall fell. Mr. Nebus answered if the wall fell, it would fall on his neighbor's yard. Mr. Matthews asked if Mr. Nebus knew when the house was built. Mr. Nebus said that they bought the house eleven years ago, and the wall was there when they purchased the home. Mr. Nebus said that they were proposing an interlocking brick wall. He produced a brochure that showed the type of wall they desired. Mrs. Hough asked if there had been any comments by Mr. Nebus's neighbors regarding the proposed wall. Mr. Nebus said that no one had objected or said anything regarding the proposed wall. Mr. Dalziel asked how long ago Mr. Nebus noticed the deterioration of the wall. Mr. Nebus said that he noticed it early last summer. He said that he noticed it because the patio pavers began to sink, and he didn't know why, and then he realized that the wall was the "culprit" behind the patio's demise. Mr. Survella said that the zoning denial was 10-30-03 received March 1, 2004.

Mr. Dalziel said that the photos submitted showed some excavation apparently being done on the property behind the wall. Mr. Nebus said that was correct. Mrs. Hough said that she had driven by the property and that it was quite steep from Sandy Hill down. Mr. Dalziel asked Mr. Nebus if he had renovated the house a few years ago. Mr. Nebus answered that they had renovated the home. Mr. Dalziel said that it would be more evident after the site visit, but asked if there was any reason why the wall couldn't be moved further into the property. Mr. Nebus said that would be very close to the pool. Mr. Dalziel asked where the part was that was deteriorating. Mr. Nebus said it was in the back corner. Mr. Dalziel noted that corner was further away from the pool and asked even if it was four feet, would the applicant consider moving the wall in towards his property. Mr. Nebus said that the environmental approach people from Chatham Township suggested that they could remove the block up top and excavate on the Nebus property down and remove the wall, replace the wall and build the dirt back up. Mr. Dalziel said that Mr. McTamney in his zoning denial said that the wall was only .7 feet from the property line. Mr. Dalziel said that the site plan said at the closest point the wall was at .1 feet, and asked that that issue be clarified.

Mr. Dalziel said that in his opinion given the fact that they were heavily excavating and that they were replacing the wall that the Nebus give a little more buffer to the neighbors by moving the wall in. Mrs. Janice Nebus was sworn in by the chairperson. Mrs. Nebus said that it was possible that the wall could go back further, and asked how much further they would need to go back. Mr. Dalziel answered enough clearance needed to maintain that portion of the property. Mrs. Nebus asked when the Board came out, could they suggest where the wall should go. Mr. Dalziel said it was not the Board's place to tell the applicants what to do, but they would look at the property at the site visit.

Mr. Dalziel said that the retaining wall on the variance plan showed the elevation at the stair was 6 ft. 0 inches, and said that the numbers needed to be consistent. He asked if the vinyl fence would be put back up after the wall was replaced. Mr. Nebus answered that it would. Mr. Benton said that at the bottom of the plan it showed "proposed fencing" and asked if there was fencing there currently. Mrs. Nebus answered there was fencing in the one area where the wall was really rotted. Mr. Nebus said that across the back of the property was a chain link fence. Mr. Benton said that the Nebus had testified that the wall was there before they bought the house, and asked if the whole raised area was produced by excavating the pool. Mr. Nebus said that he believed the original topography was the way it was now. Mrs. Nebus added that when people looked from their backyard directly to Ferndale, they could see the roof of the neighbor next door.

A site visit will be held June 26, 2004.

The next regular meeting of the Board of Adjustment will be July 15, 2004.